Supreme Court, U.S.
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No. 99-1912

In The

Supreme Court of the United States

FRITO-LAY, INC.,

Petitioner,

v.

ROBERT HUNTLEY, MICHAEL HILL, RICHARD HENRY, BRENT DOVE, KENNETH REYNOLDS, JACKIE JEWELL, MICHAEL MORRIS, WILLIAM WELCH, BERT BORG, FRED BELLOWS, AND SHERMAN PERKINS, on behalf of themselves and others similarly situated,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Washington

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

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OPINIONS BELOW

The order of the Washington State Supreme Court denying Frito-Lay's Petition for Review (Pet. App. 1a-2a) is reported at 140 Wash. 2d 1003 (2000). The Washington State Court of Appeals decision (Pet. App. 5a-13a) is reported at 979 P.2d 488 (1999). The opinion of the Superior Court of the State of Washington for King County (Pet. App. 23a-29a) is not reported.

JURISDICTION

The Court of Appeals reversed the trial court's order dismissing respondents' complaint, and remanded the case for further proceedings. Absent settlement, the case will be tried on the merits of respondents' state law wage-and-hour claims. Frito-Lay maintains that respondents are exempt "outside salesmen" under state law. If Frito-Lay prevails on this defense, respondents' wage-and-hour claim will fail, for exemption is a complete defense to respondents' lawsuit. If Frito-Lay loses at trial, it may again seek review here once state court litigation is concluded.

Under *Jefferson v. City of Tarrant*, 522 U.S. 75 (1997), the decision of the Washington State Court of Appeals is accordingly not a "final judgment" under 28 USC § 1257(a).

STATUTES INVOLVED

29 USC § 185(a):

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Wash. Rev. Code § 49.46.110:

Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter.

Wash. Rev. Code § 49.46.120

This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted here from, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued

hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

STATEMENT OF THE CASE

Frito-Lay seeks review of an intermediate state appellate court decision reversing the trial court's dismissal of respondents' state law wage-and-hour claims, and its order sending the respondent's claims to arbitration under a collective bargaining agreement ("CBA").[1]

Respondents deliver Frito-Lay snack foods to retail sales outlets in western Washington state by truck. Frito-Lay pays them no overtime wages regardless of the number of hours they work in a work week.

Respondents are or were represented for collective bargaining purposes by separate Teamster local unions, all based in western Washington. The collective bargaining agreements do not provide for the payment of overtime for work in excess of forty (40) hours in a work week, and are in fact silent as to overtime.[2]

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[1] This is the second case to come before the Court this term involving overtime claims by delivery drivers in Washington state. *See Schneider v. Snyder's Foods, Inc.*, 95 Wash. App. 399, 976 P.2d 134, *rev. denied*, 139 Wash. 2d 1003, 989 P.2d 1141, *cert. denied*, 120 S. Ct. 1573 (2000).

[2] Frito-Lay's suggestion that it and the Teamsters agreed to treat respondents as exempt "outside salesmen" under the Washington Minimum Wage Act ("MWA") is, at best, a half truth. The CBA provided overtime for the respondent route

Respondents sued in King County Superior Court seeking payment for their overtime wages under the state Minimum Wage Act, Wash. Rev. Code §§ 49.46 *et seq.* Respondents sought certification as representatives of a class consisting of all delivery drivers employed by Frito-Lay in Washington, both union and non-union.

The trial court dismissed the complaint, holding respondents' claims preempted by § 301 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 185. (Pet. App. 23a-29a)[3] The court ordered the respondents' claims be submitted to arbitration under the CBA.[4]

The Washington State Court of Appeals reversed, and remanded the case for further proceedings. (Pet. App.

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salesmen until the mid-1980's when that clause was removed in bargaining at Frito-Lay's insistence. A Teamster representative testified in deposition that the Frito-Lay employees accepted that CBA "in lieu of going on strike for overtime." Another cautioned that acceptance of Frito-Lay's last and final offer removing the overtime provision did not signal union agreement that the employees were exempt. Finally, nowhere in the CBA is the exempt or non-exempt status of the respondents discussed.

[3] The trial court incorrectly held that the CBA described respondents in terms of the MWA exemption as "outside salesmen." (Pet. App. 27a-28a) The CBA describes respondents as "Route Salesmen" and "Bin Salesmen." The CBA is silent on the issue of overtime payments to the respondents. No job descriptions appear in the CBA.

[4] The CBA limits the arbitrator's authority to "grievances," defined under the contract as "disputes arising between the Employer and employees . . . with respect to the interpretation or the terms of this Agreement . . ."

5a-13a) The Washington State Supreme Court denied review. (Pet. App. 1a-2a)

REASONS FOR DENYING THE WRIT

A. The Decision Below is a Correct Application of This Court's Decisions

However confusing the state of section 301[5] preemption may be (Pet. 12), this is not the case in which it should be clarified. The decision below in no way threatens the primacy of arbitration in labor relations where, as here, the CBA precludes arbitral consideration of state law claims.

The trial court sent the respondents' MWA claims to arbitration under the CBA despite that an arbitrator appointed under the agreement would lack jurisdiction over those state law claims. *See Iowa Beef Packers, Inc. v. Thompson*, 405 U.S. 228 (1972) (writ of certiorari dismissed as improvidently granted in Fair Labor Standards Act case where collective bargaining agreement limited arbitral jurisdiction to grievances "pertaining to a violation of the agreement"). Since respondents' state law claims are independent of the CBA and cannot be adjudicated under it in any event, the policies undergirding section 301 preemption are not served by pre-emption. *Livadas v. Bradshaw*, 512 U.S. 107, 122-23 (1994) ("[T]he preemption rule has been applied only to assure that the purposes animating 301 will [not] be frustrated . . . by state laws

[5] 29 USC § 185.

purporting to determine 'questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement' " citing *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985)).

The Court has long recognized that labor arbitration is an unsuitable forum for statutory wage-and-hour claims in any event. *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 737 (1981). Unions are concerned with collective rights, not necessarily individual ones, and may, without violating the duty of fair representation, "permit some employees' statutorily granted wage-and-hour benefits to be sacrificed if an alternative expenditure of resources would result in increased benefits for workers in the bargaining unit as a whole." *Id.* at 742. Here there is evidence that the Teamsters acceded to Frito-Lay's demand to remove overtime pay from the contract in lieu of calling a strike. As such, sending any portion of respondents' claims to an arbitrator (who is hobbled by the CBA against consideration of state law) would be a useless undertaking.

B. The State Supreme Court's *Commodore* Decision Protects State and Federal Interests

The Washington State Supreme Court has adopted a rule which accommodates the state's interest in enforcement of its wage-and-hour laws while protecting the federal interest in uniform interpretation of collective bargaining agreements. In *Commodore v. University Mechanical Contractors, Inc.*, 120 Wash. 2d 120, 839 P.2d 314 (1992) the court held that employer defenses to state

law claims implicating a collective bargaining agreement do not require dismissal of the complaint. Rather, the court may adjudicate the defense under its concurrent section 301 jurisdiction. *See Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962).[6] The *Commodore* court recognized that the law to be applied to the employer's contract defense was federal law. *Commodore*, 120 Wash. 2d at 131-32.

The state Supreme Court's approach to section 301 preemption in *Commodore* is a sensible accommodation of both federal and state interests. The defendant's proposed solution – outright dismissal of union-represented employees' wage-and-hour claims and referral of those claims to an impotent arbitrator – is manifestly unreasonable, and fails to accommodate the state of Washington's interest in uniform enforcement of its wage-and-hour laws.[7]

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[6] *See Livadas*, 512 U.S. at 123-24 n.17: "[W]hile contract interpretation disputes must be resolved in the bargained-for arbitral realm . . . 301 does not disable state courts from interpreting the terms of collective bargaining agreements in resolving nonpreempted claims," *citing Charles Dowd Box Co.*

[7] *See, e.g., Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985): "It would turn the policy that animated the Wagner Act on its head to understand it to have penalized workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employers."

CONCLUSION

The Petition should be denied.

June 30, 2000

Respectfully submitted,

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